IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA ex rel.;
CORI RIGSBY; AND KERRI RIGSBY — RELATORS/COUNTER-DEFENDANTS

v. — CASE No. 1:06-cv-433-LTS-RHW

STATE FARM FIRE & CASUALTY
COMPANY, et al. — DEFENDANTS/COUNTER-PLAINTIFFS

RELATORS' NOTICE OF INTERVENING AUTHORITY

Cori and Kerri Rigsby (the "Rigsbys") agree with State Farm that Judge Vance's January 24, 2011 Order and Reasons in *United States of America ex rel. Branch Consultants, L.L.C. v. Allstate Ins. Co.*, is relevant authority to their Motion for Reconsideration of Scope [738], but the Rigsbys believe that the latest *Branch* decision again supports their motion to reconsider the scope of the current litigation. The *Branch* court's ruling recognized that "a relator need not be an original source of the actual false claims made by the defendants to the government," as long as the relator is "an original source of a certain core of information, such as the basic *modus operandi* of the fraud."[1] Thus, this most recent opinion reinforces the *Branch* court's prior ruling, which held that original-source knowledge would have "entitle[d] [the *Branch* relator] to discovery on all the alleged instances of fraud in the loss-shifting scheme, even those outside the examples in the First Amended Complaint."[2]

State Farm incorrectly contends that the *Branch* decision suggests that the "threshold issue in this litigation" is the McIntosh claim rather than State Farm's scheme to defraud the government.[3] But in contrast to the Rigsbys, the *Branch* relator had no direct or independent knowledge of any fraudulent scheme; instead, its claims rested entirely upon allegations that individual exemplar properties had been improperly adjusted. In initially holding that the *Branch* relator qualified as an original source, the court found that the number of exemplar properties in the complaint "was sufficient to raise an *inference* of potential fraud."[4] The court denied the defendants' motions to dismiss by explaining that "the presence of a large number of fraudulent adjustments suggests that there are many more examples of the same conduct – a 'scheme' even."[5]

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[1] *Id*. at 64.
[2] Order and Reasons, *United States ex rel. Branch Consultants, LLC v. Allstate Insurance Co., et al.*, docket number [615] at 32, No. 2:06-cv-4091 (E.D. La. Aug. 13, 2010), attached as Exhibit A to Relators' Notice of Supplemental Authority With Respect to Issues in Motion to Reconsider Scope of Proceedings in Light of Evidence Adduced in Discovery, [750].

After discovery, however, the court found that "the purported exemplars simply do not support" the *Branch* relator's allegations.[6] Without the *Branch* relator's sole basis for direct and independent knowledge of fraud—the exemplar properties—it no longer qualified as an original source because "Branch is left with the same kind of general allegations of loss-shifting fraud as the allegations contained in numerous public disclosures."[7]

Notably, however, after holding that the exemplar properties did not support the relator's allegations, the *Branch* court once again recognized that "a relator need not be an original source of the *actual false claims* made by the defendants to the government."[8] Instead, it is sufficient for a relator to be "an original source of a certain core of information, such as the basic *modus operandi* of the fraud."[9]

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[3] State Farm's Notice of Intervening Authority Regarding [738] Rigsbys' Motion for Reconsideration of Scope of Proceedings in Light of Additional Evidence Adduced in Discovery; [734] State Farm's Motion for Summary Judgment; and [736] State Farm's Motion for Summary Judgment on the Claims of Cori Rigsby, [873] at 2.
[4] *Id*. at 65 (emphasis added).
[5] *Id*. at 53.
[6] *Id*. at 52.
[7] *Id*. at 54.
[8] *Id*. at 64.
[9] *Id*. at 65.

Here, the Rigsbys have explained from the beginning that State Farm was engaged in a scheme to defraud the government, and they provided specific details and direct evidence on the nature of that scheme, the people involved, and the manner in which it was carried out. The Rigsbys did not ask this Court to infer that State Farm schemed to defraud the government based only on a sample of false claims; they told the Court how that scheme had happened. Indeed, the Court has previously recognized that "[t]he Allegations of the Amended Complaint go well beyond the two specific instances of misconduct specifically identified. The Relators charge State Farm. . . entered into a conspiracy to inflate or overstate the amount of flood damage that actually occurred."[10]

Thus, as the *Branch* decision again makes clear, the Rigsbys' direct and independent knowledge of State Farm's scheme establishes the Court's subject-matter jurisdiction over all of the false claims submitted as a result of that scheme. Accordingly, even if a jury were to determine that the McIntosh home sustained $250,000 of flood damage, the larger question of whether State Farm's scheme resulted in other false claims would remain as a necessary issue for trial. For that reason, the most recent *Branch* ruling supports the Rigsbys' motion to reconsider and expand the scope of this litigation.

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[10] Memorandum Opinion, [434] at 3.

Respectfully submitted this the 28th day of January, 2011.

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CERTIFICATE OF SERVICE

I, C. Maison Heidelberg, attorney for Cori Rigsby and Kerri Rigsby, do hereby certify that I have this **28th day of January, 2011**, caused the foregoing document to be filed with the Court's CM/ECF system, which will cause notice to be delivered to all counsel of record.

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